

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

IN RE: DIGITEK PRODUCT LIABILITY LITIGATION
MDL NO. 1968

CARLA YORK, ET AL.,)
PLAINTIFFS,)
V.) MDL NO.
2:09-CV-00544
ACTAVIS TOTOWA, LLC, ET AL.,)
DEFENDANTS.)

DEPOSITION OF [REDACTED] PRODUCED, SWORN
AND EXAMINED ON THE 11TH DAY OF DECEMBER, 2009,
BETWEEN THE HOURS OF 9:00 A.M. AND 11:59 A.M., AT
THE OFFICES OF DINSMORE & SHOHL, 500 WEST JEFFERSON
STREET, SUITE 1400, LOUISVILLE, JEFFERSON COUNTY,
KENTUCKY, BEFORE LISA MIGLIORE BLACK, CERTIFIED
COURT REPORTER--KENTUCKY AND NOTARY PUBLIC WITHIN
AND FOR THE STATE OF KENTUCKY.

*** **

APPEARANCES

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1 affirmatively.)

2 BY MS. CRISWELL:

3 Q. Any reason we can't go ahead with your
4 deposition today?

5 A. No.

6 Q. You're feeling good?

7 A. Yes.

8 Q. Okay. All right. So let me ask you --
9 let me sort of get organized here.

10 Have you ever -- have you ever been a party to
11 a lawsuit before this case?

12 A. No.

13 Q. Okay. So no one has never sued you, and
14 you've never sued anybody?

15 A. No.

16 Q. Okay. Have you ever served on a jury?

17 A. No.

18 Q. Okay. How did you learn about the
19 lawsuit or a lawsuit?

20 A. Well, actually, I didn't. When I got
21 the recall, I had a friend go online and see if
22 anybody was representing them after I went and got
23 all my mom's medical records.

24 Q. Okay. Let me ask you, did you get the
25 recall notice, or did your mom get it?

1 never actually lived with my mother.

2 Q. Okay. All right. [REDACTED] is your
3 mom?

4 A. Yes.

5 Q. Was your mom -- is your mom?
6 Was she your birth mother?

7 A. Yes.

8 Q. So you lived with her as a child?

9 A. No.

10 Q. No?

11 A. My father raised me.

12 Q. I see.

13 Okay. And your dad's name is...

14 A. [REDACTED]

15 Q. Okay. So that's where the name [REDACTED]
16 came in?

17 A. Exactly.

18 Q. Okay. I got it.

19 So you were raised by your dad all the way
20 until you were an adult and went on about your life?

21 A. Yes.

22 Q. Okay. And is he still alive?

23 A. No.

24 Q. When did he pass?

25 A. 1997.

1 Q. Okay. Why did you never live with your
2 mom?

3 A. I don't know.

4 Q. Was there ever any discussion about why
5 you weren't living with her as a child?

6 A. I just know my daddy had custody of us
7 because my grandmother was able to take care of us
8 because my mom got a job, was working, and she
9 couldn't.

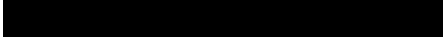
10 Q. You have a sister?

11 A. Yes.

12 Q. What is her name?

13 A. 

14 Q. 

15 A. 

16 Q. Yeah. Did she also live with you and
17 your dad --

18 A. Yes.

19 Q. -- and not with your mom?

20 A. Right.

21 Q. And was  her mom also?

22 A. Yes.

23 Q. So growing up, even though you were
24 living with your dad because your dad had custody,
25 did you see your mom?

1 A. Oh, yes.

2 Q. Okay. How often?

3 A. Every weekend.

4 Q. Okay. During the last five years of her
5 life, how often did you see her?

6 A. Quite often. We became close.

7 Q. Okay. When did you become close?

8 A. Probably when I was about 18, 19 years
9 old.

10 Q. Was there some event that happened that
11 caused that to occur or what?

12 A. No. We just -- I don't know. I guess
13 it was like -- I don't know. I really can't explain
14 that one.

15 Q. Okay. All right. So -- and you're how
16 old now?

17 A. [REDACTED]

18 Q. Okay. So during the last -- let's talk
19 about the last 10 years of your mom's life. How
20 often would you say you actually saw her?

21 A. The last what? Excuse me?

22 Q. 10 years.

23 A. 10 years? Well, I called her every day,
24 but as far as seeing her, I would go up and see her
25 on weekends when I had a chance.

1 Q. Okay. How far away was her home from
2 yours?

3 A. About a 45-minute drive.

4 Q. Okay. All right. So it's not just
5 around the corner?

6 A. Right.

7 Q. Okay. Well, let's talk about the last
8 five years of her life.

9 Can you give me an idea, then, as to how often
10 you actually saw her?

11 A. Well, I would go up there on weekends
12 when I didn't have to work. Or holidays, we all got
13 together and stuff. I called her every day.

14 Q. Okay. Give me -- give me an average, if
15 you can -- if you can't, that's okay, but if you can
16 give me an average, in an average month, how often
17 would you see your mom in the last five years of her
18 life?

19 A. Probably twice a month, except when she
20 started getting really sick, and then I was up there
21 a lot.

22 Q. And at what point in time did she start
23 getting really sick?

24 A. She got really bad -- in February
25 2007 --

1 Q. Okay.

2 A. -- is when she really started going
3 downhill.

4 Q. Okay. So what was it about her physical
5 condition or health that changed in about February
6 of '07, did you say -- '06?

7 A. '07.

8 Q. '07.

9 A. She started getting -- she was weak and
10 tired all the time. We couldn't get her to do
11 anything. She didn't feel like doing anything.

12 Q. And was that something that your mom
13 told you about or you noticed on your own or what?

14 A. Well, it was pretty obvious, because
15 when I talked to her on the phone, she didn't want
16 to go nowhere. She didn't want to do nothing.

17 "Well, you don't have to come up here and see
18 me."

19 "Well, I want to."

20 Q. Okay. So what was her health like prior
21 to that?

22 A. Well, let's see. She liked to go to
23 gambling boat. She had a puppy that she played with
24 and took for walks. She went out to eat breakfast
25 just about every morning by herself, and she liked

1 A. I don't know.

2 Q. Okay. Do you have any photographs of
3 her?

4 A. Yes.

5 Q. Okay. Was she overweight? Was she
6 slim? How would you characterize her during, let's
7 say, the '06, '07 time frame?

8 A. Well, she wasn't what you call over
9 overweight. She was a little overweight, I guess,
10 but for her age, I guess that's supposed to be
11 normal, but she wasn't obese or anything like that.

12 Q. Okay. How tall was she?

13 A. 5'4".

14 Q. Okay. Do you have any idea what she
15 weighed during 2006, 2007?

16 A. The last time I remember her telling me
17 her weight, she said she weighed 165.

18 Q. And about when was that?

19 A. I don't know -- maybe five years ago.

20 Q. All right. You mentioned something a
21 minute ago. Let me just circle back around.

22 You said -- I think you said that the doctors
23 weren't able to tell you what caused her to have her
24 strokes. Did I get that right?

25 A. Yes.

1 Q. What doctors did you talk about -- talk
2 to about that?

3 A. Dr. Gatewood.

4 Q. Gatewood.

5 Okay. And what kind of a doctor is
6 Dr. Gatewood?

7 A. He was her family doctor.

8 Q. Is he a general practitioner?

9 A. Yes.

10 Q. And when did you talk to him about what
11 had caused the strokes?

12 A. Right after she had them.

13 Q. Okay. So each time?

14 A. No.

15 Q. How many strokes are we talking about?

16 A. She had two, but we asked him after the
17 first one, and he told us that she was taking enough
18 blood thinner that she should not have had a stroke.

19 Q. Okay. And "you" meaning you and your
20 sister?

21 A. Yes.

22 Q. Anybody else involved in that
23 conversation?

24 A. No.

25 Q. Okay. So after the first stroke -- do

1 back to you get the recall letter, and then you go
2 get all of the medical records that you told me
3 about. You talked to your sister about medications
4 that she had removed from the home -- your mom's
5 home, and you went and retrieved all the
6 prescription medications.

7 A. Yes.

8 Q. When did you first consider a lawsuit?

9 A. When I got the recall, it got me to
10 thinking about what the doctors had said about there
11 was no reason for her to have had a stroke, and the
12 only explanation they could give us was medications
13 interacting.

14 Q. Okay. Now, did you talk with more than
15 just Dr. Gatewood about this?

16 A. No.

17 Q. So when you said, "the only explanation
18 they could give us," the "they" is just
19 Dr. Gatewood?

20 A. Right.

21 Q. Did you talk with her cardiologist ever
22 about what was causing her health problems?

23 A. Yes.

24 Q. What did he say?

25 A. Well, we originally had tried to get her

1 off of that at one point in time because it had made
2 her sick, and therefore we did not get along with
3 him well at all.

4 Q. You tried to get her off of what?

5 A. Digitek.

6 Q. When did you do that?

7 A. I don't remember now. I went in there
8 with my sister that day because Mom had been getting
9 really nauseous and sick, and we thought that new
10 pill might have had something to do with it, and I
11 know that they did take her off of it for a while.

12 Q. Give me a time frame, though. Are we
13 talking about the year that she died --

14 A. Yes.

15 Q. -- or are we talking about the three
16 years before? What are we doing here?

17 A. The year she died.

18 Q. Okay. Where in the year was it that you
19 and your sister went to talk to your mom's
20 cardiologist?

21 A. I don't know exactly.

22 Q. Can you give me some idea as to when you
23 had this conversation with respect to when she had
24 her first stroke?

25 A. At least a month before she had the

1 stroke.

2 Q. Okay. So she has the stroke in April --
3 April 23, '07, and then we're talking about --

4 A. It was either February or March, it
5 would have had to have been.

6 Q. Okay. And where did you have that
7 conversation?

8 A. When we took her in for her checkup.

9 Q. And which cardiologist did you talk to?

10 A. Dr. Bruce Fisher.

11 Q. Fisher.

12 Okay. So tell me everything you can remember
13 about that conversation.

14 A. Well, my sister kept trying to explain
15 to him that the medicine that he was giving Mom was
16 making her sick and that she needed something
17 besides that because that wasn't working. So he
18 kind of argued with us for a little bit, and then he
19 says -- then he more or less took her off it after
20 that.

21 Q. And which medication are we talking
22 about?

23 A. Digitek.

24 Q. Did you see anything in the medical
25 records to indicate that your mom was taking Digitek

1 Dr. Gatewood?

2 A. Yes.

3 Q. And Dr. Gatewood said, "I don't know
4 what caused the stroke"?

5 A. Yes.

6 Q. And what else did he say?

7 A. That's all he said. He just -- he said
8 there's no way she should have had a stroke because
9 she was taking the right blood thinners.

10 Q. Did any medical practitioner ever give
11 you an explanation for either of the strokes?

12 A. No.

13 Q. Do you know if any medical practitioner
14 ever gave your sister any explanation for either of
15 the strokes?

16 A. No.

17 Q. Did your mom tell you anybody had given
18 her an explanation for either of the strokes?

19 A. No.

20 Q. Okay. Has anybody told you that the
21 strokes were caused by taking Digitek?

22 A. No.

23 Q. Okay. Has anybody told your sister
24 that?

25 A. No.

1 Q. The pill bottle that you located at your
2 sister's that she had taken from your mom's house
3 had two pills left in, right?

4 A. Yes.

5 Q. And you believe it had 30 in it when it
6 was first dispensed to your mom?

7 A. I think it either had 28 or 30 on it. I
8 really don't know.

9 Q. Okay. Do you know where the other pills
10 that were in that bottle went?

11 A. No.

12 Q. All right. Was it your decision to file
13 this lawsuit?

14 A. Yes.

15 Q. Okay. And was it your decision to be a
16 class representative?

17 A. Mr. Jones asked me to be one.

18 Q. Okay. What is a class representative?

19 A. Representing all the people in the State
20 of Kentucky.

21 Q. For what?

22 A. For economic...

23 Q. Economic?

24 A. Well, any kind of economic damage that
25 any of them have suffered.

1 Q. What would that be? What would the
2 category of economic damages be that you understand
3 you're representing these folks for?

4 A. Medical bills, gas, co-payments.

5 Q. Anything else?

6 A. Whatever kind of economic problems that
7 they had with it.

8 Q. Did you suffer any economic damages?

9 A. No.

10 Q. But you believe other members of the
11 class may have?

12 A. Yes.

13 Q. Have you spoken to any members of the
14 class?

15 A. No.

16 Q. Do you know any of the names of any of
17 these folks?

18 A. No.

19 Q. Have you made any effort to try to
20 figure out who they are?

21 A. No.

22 Q. Why not?

23 A. I honestly wouldn't know how other than
24 talking to Mr. Jones.

25 Q. And he's been your lawyer for how long?

1 lawsuit of your own for the wrongful death of your
2 mother?

3 A. Yes. I don't --

4 MR. JONES: You mean other than the
5 claim she's brought in this lawsuit?

6 MS. CRISWELL: The claim in this lawsuit
7 is for economic damages only.

8 MR. JONES: No, that's absolutely not
9 true.

10 MS. CRISWELL: Well, that's what we --
11 when I started out this deposition, I asked you --

12 MR. JONES: The class action is for
13 economic damages only.

14 MS. CRISWELL: Right.

15 MR. JONES: The lawsuit clearly says
16 she's making a claim for her mother's death and the
17 hospitalization. We've absolutely not withdrawn any
18 individual personal injury claims, only the class
19 allegations. She's not representing a class of
20 folks that are claiming personal injuries. So I
21 want to make sure the record is very clear on that.

22 BY MS. CRISWELL:

23 Q. Okay. So, [REDACTED] are you
24 intending to file a wrongful death lawsuit?

25 MR. JONES: She's filed a wrongful death

1 lawsuit.

2 MS. CRISWELL: Okay.

3 MR. JONES: That is what is sitting
4 there.

5 MS. CRISWELL: Are you going to amend
6 the complaint or no?

7 MR. JONES: For what purpose?

8 MS. CRISWELL: I thought there was a
9 discussion based upon your representation that this
10 class was only going to deal with economic damages,
11 that you were going to be filing a first amended
12 complaint.

13 MR. JONES: I believe you guys have
14 requested that I file a first amended complaint. It
15 will be amended in some form, whether it's a
16 dismissal of part of the allegations. I haven't
17 exactly decided what procedural approach I'll take
18 to do that now.

19 MS. CRISWELL: Okay.

20 MR. JONES: Just so we're clear, we're
21 here today on a class action for economic damages,
22 which is what we talked about before the deposition,
23 which I talked to your colleagues about, that we
24 talked about before the deposition started.

25 Each of the individuals listed on the face of

1 MS. CRISWELL: Okay. Let's take five
2 minutes.

3 (A BRIEF RECESS WAS TAKEN.)

4 BY MS. CRISWELL:

5 Q. Okay. Let's sort of tie up a couple of
6 loose ends and move on.

7 [REDACTED] I think what you told me is you
8 didn't suffer any economic damages; is that right?

9 A. Right, yes.

10 Q. Okay. And yet you're representing a
11 class of people who you believe did suffer --

12 A. Yes.

13 Q. -- economic damages; is that right?

14 A. Yes.

15 Q. Are you comfortable with that?

16 A. Yes.

17 Q. Okay. Now, are you also claiming
18 damages for the death of your mother?

19 A. Yes.

20 Q. You are? Now that we've had this
21 conversation, you're looking over at your lawyer.

22 MR. JONES: She was confused. She
23 thought you were asking as a class representative
24 was she claiming --

25 MS. CRISWELL: No.

1 A. You mean which doctor?

2 Q. Well, no. Did those come off a pill
3 bottle too, or did they come out of medical records
4 or what?

5 A. One of them came from medical records,
6 and one came from the bottle.

7 Q. Okay. Which one of the two on page five
8 under Roman numeral three came from a bottle and
9 which came from the medical records?

10 A. I don't know. I don't remember.

11 Q. And I don't see the word "Digitek" for
12 either one of those. Would you agree with me?

13 A. Yes.

14 Q. Okay. One says 1.25 and doesn't give
15 any further description, right?

16 A. Right.

17 Q. And the other one says 0.250 digoxin.

18 A. Yes.

19 Q. What is digoxin?

20 A. I thought it was Digitek --

21 Q. Okay.

22 A. -- with a different name.

23 Q. Are you using the words interchangeably,
24 those two? You think it's the same thing?

25 A. Yeah.

1 thought of something like that.

2 Q. Okay. And did you ever, or to your
3 knowledge, did your sister ever, at the time that
4 she went into hospice care at the nursing home, ask
5 to see what medicines she was on at that time?

6 A. No -- well, I don't know if my sister
7 did. She may have. I don't know.

8 Q. (Inaudible).

9 (INQUIRY BY THE COURT REPORTER.)

10 MS. CRISWELL: Start -- say that again,
11 Holly.

12 BY MS. SMITH:

13 Q. Is it your opinion that your mother's
14 death resulted solely because she took digoxin or
15 Digitek?

16 A. Yes.

17 Q. (Inaudible) believe there are any other
18 contributing factors?

19 (INQUIRY BY THE COURT REPORTER.)

20 (A DISCUSSION WAS HELD OFF THE RECORD.)

21 BY MS. SMITH:

22 Q. So you do not -- okay. So you do not
23 believe there are any contributing factors to her
24 death?

25 A. I don't understand what that means

1 Q. So is your lawsuit about more
2 than the medication Digitek?

3 A. No.

4 Q. So in your lawsuit relating to
5 Digitek, what do you hope will come out of it?

6 A. So they won't put any more bad stuff on
7 the market that can kill somebody else.

8 Q. And by "they," again, are you
9 referring to the pharmaceutical industry as a whole?

10 A. Yes.

11 Q. So do you agree, then, that
12 you're trying to get relief in your lawsuit against
13 manufacturers who had nothing to do with Digitek?

14 A. No.

15 Q. Can you explain to me how you
16 envision your lawsuit changing the pharmaceutical
17 industry as a whole?

18 A. Well, hopefully the government will step
19 in and be a little bit more aware of what's been
20 produced and shipped out to people.

21 Q. From that response, then, is it
22 fair to say that you think the government is
23 partially responsible for what you perceive as
24 problems in the pharmaceutical industry?

25 MR. JONES: Objection to the form of the

1 question.

2 You can answer.

3 A. Well, somebody has control over it. You
4 know, whoever has got control over it should have
5 better control than what they got. I work somewhere
6 that can put out stuff that doesn't kill people.

7 Q. Do you believe the government,
8 then, is partially responsible for your mother's
9 death?

10 MR. JONES: Objection to the form of the
11 question.

12 You can answer.

13 MS. SMITH: You may answer.

14 A. Well, if you put it that way, I guess it
15 would have to be because they obviously aren't
16 keeping it all under control very well.

17 Q. In addition to this reform that you hope
18 to achieve, is there anything else that you
19 personally want to obtain as a result of having
20 filed your lawsuit?

21 A. No.

22 Q. Do you seek money damages of any
23 sort for anything?

24 A. I don't know how to answer that,
25 because, to me, it wasn't about money to begin with.

1 It was just trying to make -- trying to get somebody
2 more aware of what's going on.

3 Q. And you seek to represent a
4 proposed class of all Illinois persons and estates
5 who took Digitek during the time frame of the
6 recall; is that correct?

7 MS. CRISWELL: It's Kentucky, Holly.

8 BY MS. SMITH:

9 Q. Kentucky. I'm sorry.

10 A. Yes.

11 Q. And as I understand it, and correct me
12 if I'm wrong, you hope on your behalf to bring a
13 claim for wrongful death, as well as economic
14 damages, but on behalf of the rest of the state,
15 only economic damages; is that correct?

16 A. No.

17 MR. JONES: Yes.

18 THE WITNESS: Yes.

19 BY MS. SMITH:

20 Q. If you could, in your words, please tell
21 me how you envision your lawsuit functioning.

22 MS. CRISWELL: I think we should
23 clarify. She changed her answer, Holly. After she
24 said, "no," I think she said, "yes."

25 MR. JONES: Yes.

1 on February 27th and asked that your mother be taken
2 off of the medication, did you -- is it correct that
3 you testified that your reason you gave him at the
4 time was that it was making her sick to her stomach?

5 A. Yes.

6 Q. Do you have any reason to believe that
7 Digitek was not working for her heart?

8 A. No.

9 Q. So, in fact, it may have been doing its
10 job with respect to her heart, but at the same time,
11 you believe it was making her sick to her stomach,
12 and that's the reason she went off the medicine?

13 A. Yes.

14 Q. And to the extent it helped her heart,
15 do you agree that your mother benefitted from
16 Digitek?

17 A. No.

18 Q. So if when she was on Digitek and it
19 helped her heart condition, you do not think that
20 helped your mother?

21 A. No, I don't know.

22 Q. It may or may not have helped her?

23 A. Yes.

24 MS. SMITH: Leslie, I think that's all
25 the questions I have.

STATE OF KENTUCKY)
) SS: ERRATA
COUNTY OF JEFFERSON)

I HAVE READ THE FOREGOING PAGES, AND THE
STATEMENTS CONTAINED THEREIN (SUBJECT TO
CORRECTIONS, ADDITIONS, AND DELETIONS CONTAINED IN
THE ADDENDUM ANNEXED HERETO, IF ANY), AND THEY ARE
TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SUBSCRIBED AND SWORN BEFORE ME THIS DAY BY
, THIS DAY OF 2009.
MY COMMISSION EXPIRES:

NOTARY PUBLIC

1 COMMONWEALTH OF KENTUCKY)
2)
3 COUNTY OF JEFFERSON)

4 I, LISA MIGLIORE BLACK, CCR-KY, A NOTARY PUBLIC,
5 WITHIN AND FOR THE STATE AT LARGE, DO HEREBY CERTIFY
6 THAT THE FOREGOING DEPOSITION OF

7 [REDACTED]
8 WAS TAKEN BEFORE ME AT THE TIME AND PLACE AND FOR
9 THE PURPOSE IN THE CAPTION STATED; THAT THE WITNESS
10 WAS FIRST DULY SWORN TO TELL THE TRUTH, THE WHOLE
11 TRUTH, AND NOTHING BUT THE TRUTH; THAT THE
12 DEPOSITION WAS TAKEN BEFORE ME STENOGRAPHICALLY AND
13 AFTERWARDS TRANSCRIBED UNDER MY DIRECTION; THAT THE
14 FOREGOING IS A FULL, TRUE, AND CORRECT TRANSCRIPT OF
15 THE SAID DEPOSITION SO GIVEN; THAT THERE WAS A
16 REQUEST THAT THE WITNESS READ AND SIGN THE
17 TRANSCRIPT; THAT THE APPEARANCES WERE AS STATED IN
18 THE CAPTION.

19 I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
20 NOR OF KIN TO ANY OF THE PARTIES TO THIS ACTION, AND
21 AM IN NO WAY INTERESTED IN THE OUTCOME OF SAID
22 ACTION.

23 WITNESS MY SIGNATURE THIS 19TH DAY OF DECEMBER,
24 2009. MY COMMISSION EXPIRES NOVEMBER 10, 2013.

25 NOTARY PUBLIC
STATE AT LARGE, KENTUCKY